

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Nos. 20-1001(L), 20-1023

BONNIE PELTIER, *et al.*,

Plaintiffs-Appellees

v.

CHARTER DAY SCHOOL, INC., *et al.*,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

MOTION FOR LEAVE TO FILE A BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING APPELLEES
ON REHEARING EN BANC AND URGING AFFIRMANCE

Pursuant to this Court's Local Rule 35(d), the United States respectfully moves this Court for leave to file an amicus brief supporting plaintiffs-appellees. As good cause for this motion, the United States provides as follows:

1. This case concerns a charter school's uniform dress code, which imposes certain sex-segregated requirements on students. Plaintiffs contend that the dress code constitutes impermissible sex discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*

- 2 -

2. On August 9, 2021, a panel majority of this Court issued a published opinion concluding that the charter school was not a state actor for purposes of the Equal Protection Clause when it issued the challenged dress code. Panel Op. 18-29. Accordingly, the panel majority held that defendants were entitled to summary judgment on that claim. Panel Op. 40. Additionally, the full panel agreed that plaintiffs' Title IX claim was cognizable under the plain text of the statute. Panel Op. 34-40; Panel Op. 42 (Keenan, J. concurring in part and dissenting in part). Accordingly, that claim was remanded to the district court for further proceedings. Panel Op. 41-42.

3. On August 23, 2021, plaintiffs petitioned for rehearing en banc, arguing that the panel majority's conclusion regarding state action contravened Supreme Court and circuit case law and concerned an issue of exceptional importance, given the 126,000 students who attend charter schools in North Carolina and the 3.3 million students who attend such schools nationwide. Pet. for Reh'g En Banc 1, 4. On October 19, 2021, the Court granted plaintiffs' petition for rehearing en banc. Oral argument currently is set for December 10, 2021.

4. The United States requests leave to file, by November 23, 2021, an amicus brief that addresses whether the charter school's adoption and enforcement of the challenged dress code constitutes state action under the Equal Protection Clause. The United States has a strong interest in the enforcement of the Equal

- 3 -

Protection Clause, as reflected in Title IX of the Civil Rights Act of 1964, 42 U.S.C. 2000h-2, which vests the Attorney General with authority to intervene in cases “seeking relief from the denial of equal protection of the laws.” The Attorney General also has significant responsibilities regarding the enforcement of the Equal Protection Clause in the context of public education. See 42 U.S.C. 2000c-6. The United States believes that its views will be helpful to this Court in determining whether and in what instances a charter school properly may be considered a state actor for purposes of the Equal Protection Clause and Section 1983.

5. Counsel for the United States has informed counsel for the parties of its intention to file this motion. Counsel for plaintiffs-appellees consents to this motion. Counsel for defendants-appellants does not oppose this motion on the condition that defendants are permitted to file a response to the United States’ amicus brief.

- 4 -

Accordingly, the United States respectfully requests, pursuant to Local Rule 35(d), leave to file an amicus brief in this matter by November 23, 2021.

Respectfully submitted,

KRISTEN CLARKE
Assistant Attorney General

s/ Jason Lee
THOMAS E. CHANDLER
JASON LEE
Attorneys
U.S. Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 305-1915

CERTIFICATE OF COMPLIANCE

I certify that the attached MOTION FOR LEAVE TO FILE A BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLEES ON REHEARING EN BANC AND URGING AFFIRMANCE:

(1) complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d)(2) because it contains 511 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f); and

(2) complies with the requirements of Federal Rule of Appellate Procedure 27(d)(1)(D) and (E) because it has been prepared in a double-spaced format using a proportionally spaced typeface in Word 2019 and 14-point Times New Roman font.

s/ Jason Lee
JASON LEE
Attorney

Date: November 1, 2021